

**IN THE HIGH COURT AT BOMBAY  
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 641 OF 2002

Govind s/o. Maneji Vaidya,  
Age 34 years, Occu. Agriculture,  
R/o. Deshmukh Galli, Bhokar,  
Dist. Nanded.

**....Appellant.**

**Versus**

The State of Maharashtra

**....Respondent.**

Mr. S.S. Choudhari, Advocate for appellant.

Mr. S.D. Ghayal, APP for respondent/State.

**CORAM : T.V. NALAWADE AND  
ARUN M. DHAVAL, JJ.**

RESERVED ON : 15/11/2017.

PRONOUNCED ON : 12/12/2017.

**JUDGMENT : [PER T.V. NALAWADE, J.]**

1) The appeal is filed against judgment and order of Sessions Case No. 68/2000, which was pending in the court of learned Additional Sessions Judge, Nanded. The Trial Court has convicted and sentenced the appellant for the offence punishable under section 302 of Indian Penal Code (hereinafter referred to as 'IPC' for short). The sentence of life imprisonment is given to him. Heard both the sides.

2) Deceased Yamunabai was daughter of Begaji Kawane,

resident of Taroda, Tahsil Umarkhed, District Nanded. She was given in marriage to Deoba, real brother of present appellant. The deceased has left behind one daughter Sharayu and son, who is younger to Sharayu. Sharayu was aged about 8 years at the relevant time. The appellant was living in Joint Hindu Family with Deoba and his parents at Bhokar, District Nanded. The chargesheet was filed against the present appellant, Deoba and parents of appellant for the offences punishable under sections 498-A, 302 r/w. 34 of IPC. The present appellant and the other accused are acquitted of the offence punishable under section 498-A of IPC. In view of these circumstances, the evidence given as against the appellant only and only for the offence punishable under section 302 of IPC needs to be considered.

3) The incident took place on 28.2.2000 at about 8.00 a.m. in the house where the appellant was living with the deceased, Deoba and his parents, at Bhokar. In the morning Maneji, father of appellant had left home for some work, but, he was present at the station. Deoba was not at station. Accused Kewalbai, mother of appellant, Sharayu, younger brother of Sharayu and the deceased were at home. Sharayu was eating Bhakar (bread of Jawar) and she was also feeding to the younger brother. After eating some Bhakar, when Sharayu started drinking water from the container of the

house by using her hands, Kewalbai became angry. Kewalbai thought that Sharayu ought to have used pot for taking water from the container. Due to that, Kewalbai scolded both Sharayu and the deceased. Due to scolding, Yamubai became angry with Sharayu as due to conduct of Sharayu she had received scolding. The deceased started giving slaps to Sharayu and then Kewalbai intervened to stop deceased from giving beating to Sharayu.

4) Even after intervention of Kewalbai, the deceased continued to give slaps to Sharayu and one slap hit Kewalbai and due to that her bangles got broken. The appellant was in the vicinity. The appellant felt that the deceased had given slap intentionally to Kewalbai. He became angry and he picked up wooden pan of Chapati (round shaped wooden article) and started giving beating to Yamunabai with the pan. Kewalbai tried to intervene, but the appellant gave blows of pan and one blow hit the head of the deceased. The deceased collapsed and died on the spot.

5) Somebody informed Maneji about the incident. Maneji returned to home, collected information from Kewalbai and then gave report to Bhokar Police Station. The appellant left the house after the death of Yamunabai. On the basis of report given by Maneji, the crime for the offence punishable under section 302 of

IPC came to be registered in Bhokar Police Station.

6) During investigation, police prepared inquest panchanama of dead body of Yamunabai and the dead body was referred for P.M. examination. The spot panchanama was prepared. Blood was found in the Osari portion of the house where the incident had taken place. Beyond Osari portion, there were two rooms which were used for sleeping etc. by this family.

7) During investigation, police recorded statements of the relatives on parents' side and also of the neighbours of the appellant as one lady neighbour had rushed to the spot after hearing shouting of Yamunabai. The relatives of deceased made allegations that there was illtreatment to the deceased right from the beginning. Due to that the crime for the offence punishable under section 498-A of IPC was also registered. The appellant came to be arrested. While in custody, the appellant gave statement to police under section 27 of the Evidence Act. He took the police to aforesaid place and from there, he produced the pan, article used as a weapon. This article and other articles came to be sent to C.A. office.

8) Charge was framed against the present appellant for the offences punishable under sections 302, 498-A r/w. 34 of IPC. The

appellant pleaded not guilty when plea was recorded. The prosecution examined in all eleven witnesses. The appellant took the defence of total denial. During cross examination, an attempt was made to suggest that some stones of the construction fell on the deceased and due to that, she sustained injuries. In the present proceeding, it was alternatively argued that incident took place due to grave and sudden provocation as the slap was given by the deceased to the mother of appellant. It was also submitted alternatively that there was no intention of murder and at the most, the offence committed can be punished under the provision of section 304 Part II of IPC.

9) The main witness of prosecution is Sharayu (PW 8). She was aged about 8 years at the relevant time. When evidence was recorded, she had completed 10 years of age. She has deposed that on that morning, she was taking food and she was also feeding her younger brother. She has deposed that when she took water from the container directly by using her hands, Kewalbai became angry and Kewalbai abused her and also to the deceased. She has deposed that due to abuses given by Kewalbai, her mother said to her that she was required to listen the abuses because of her conduct and then mother gave her slaps 2-3 times. She has deposed that at that time, Kewalbai, grandmother was near her and she received stroke

of slap given by her mother and due to that bangles of Kewalbai got broken.

10) Sharayu (PW 8) has given evidence that appellant was present in the vicinity in Osari portion and after seeing this incident, he started assaulting the deceased by using rolling pan. She has deposed that appellant assaulted her mother on head, back, hands and leg and her mother started shouting. She has deposed that she started weeping and after hearing the noise, a lady from neighbouring house came to their house. She has given the name of lady as Vimalbai. She has deposed that Vimalbai tried to intervene in the incident to rescue her mother, but the appellant pushed her aside due to which Vimalbai fell on tank and she sustained injury to her face below her eye. She has deposed that after leaving of Vimalbai, Kewalbai closed the doors of house from inside. She has deposed that her mother died in the Osari portion itself and she had sustained injuries on her head, back and leg and blood was coming out of these injuries. She has given evidence that accused left the house and ran away. She has identified the rolling pan, Article No. 7 which was recovered and seized by police. She has deposed that she narrated the incident to the relatives of her mother on parents' side.

11) In the cross examination of Sharayu (PW 8), some

omissions which are of very minor nature are brought to her notice in relation to her previous statement. In the cross examination, it is specifically brought on the record that the container utilized for drinking water was kept in the courtyard in Osari portion. She has given all the particulars which were asked to her by the defence counsel during her cross examination and her evidence remained unshattered. Her statement was recorded by police on the day of incident and her evidence shows that police came to the place of offence at about 9.30 a.m. The suggestion given to her that her mother had a fall is denied by her. It is also suggested to her that her mother had quarreled with Kewalbai and in the incident, Kewalbai had pushed her. It is suggested to her that some stones kept over the tin sheets fell on the head of her mother, but that suggestion is also denied by Sharayu. Thus, the presence of Sharayu on the spot is not disputed by the defence.

12) Vimalbai (PW 4) is close relative of Maneji as Maneji is her cousin. Her evidence shows that on that day she was present in the neighbouring house with her parents as she had come for delivery. She has deposed that at about 8.00 a.m. she learnt from Mangala, daughter of her brother that noise of Yamuna was coming from the neighbouring house and there was shouting during quarrel and so, she went to the house of Maneji. She has deposed that

Yamunabai was lying in Osari portion and the appellant, accused was giving beating to her by using rolling pan. She has deposed that during incident, accused said as "she should now be finished" (हिचा काटा काढायचा आहे). Vimalbai (PW 4) has given evidence on the words used by accused Kewalbai also, but that need not be considered. She has given evidence that when she tried to intervene, appellant pushed her aside and she fell on barrel of the water and due to that she sustained injury below right eye. She has deposed that her mother also came to the spot and then her mother took her away as she was pregnant at that time. She has deposed that only due to the assault made on Yamunabai by the appellant, she died. She has identified the Article No. 7, the rolling pan, which was used by appellant as weapon. PW-8 has not given evidence on aforesaid words used by accused.

13) The statement of Vimalbai (PW 4) was recorded by the police on the same day. It can be said that she has not given correct description of the rooms as she has deposed that there are four rooms in the house of Maneji, when in the spot panchanama, only two rooms are shown beyond Osari portion. However, this discrepancy is not sufficient to discard the evidence of this lady. It is suggested to her that relations of her father with Maneji were

strained, but she has denied it. There was virtually no reason for her to give false evidence against the appellant. She has given evidence only against the appellant.

14) In the cross examination of Vimalbai (PW 4), some suggestions are given to create a probability that the noise of quarrel cannot be heard from the adjacent house, but these suggestions are denied. The panchanama of spot shows that incident took place in Osari portion and there is direct evidence on that. Osari portion was towards the entrance side. There was only one wall of the height of 7-8 ft. between the two houses and the roof of the house of Vimalbai was of country tiles. Due to these circumstances, this Court holds that no probability is created that Vimalbai had no opportunity to hear the quarrel and she had no reason to go to the neighbouring house. In ordinary course, relative like Vimalbai could have definitely rushed to the neighbouring house. Vimalbai was aged about 20 years and the deceased was also young. The suggestion given by the learned counsel for defence to this lady that there was dispute between her father and Maneji over the worship of religious Kathi is denied by her and there is nothing on the record about this dispute. One inconsistency with regard to the side of face where she sustained injury is brought on the record, but that is also not that material.

15) The suggestions given to aforesaid witness by the learned defence counsel show that defence is not disputing that all the injuries which were noticed on the dead body were sustained by Yamunabai in Osari portion of the house. Spot panchanama is proved in the evidence of Mohammad Ayub (PW 1) as Exh. 30. This document shows that panchanama was prepared immediately at 11.35 a.m. on the same day. Blood was lying in Osari portion and pieces of broken bangles of violet colour were also lying there. Police collected earth sample mixed with blood and broken bangles from this spot. Though small pieces of stones were lying near the portion created for taking bath, the spot panchanama does not show that Osari portion was in dilapidated condition and the stones were of the dilapidated structure. There were two rooms on the two sides of the Osari portion and on one side of the house, there was the house of Narayan, father of Vimalbai (PW 4). Thus, the spot panchanama is consistent with the oral evidence of Vimalbai (PW 4) and Sharayu (PW 8).

16) In the evidence of Mohammad Ayub (PW 1), the inquest panchanama is proved. The inquest panchanama at Exh. 29 shows that it was prepared in the Osari portion where incident had taken place. It shows that there was bleeding injury over head on right

side near ear and due to the blow, that portion was pressed by atleast 1 inch. Bleeding had taken place through nose. There were some other injuries on the body, but they were of abrasions in nature. There were no bangles in the hands of dead body. There were some marks on the back showing that there were blunt injuries. There was blood on the clothes of the deceased. The panchas formed opinion that the death took place due to the injury caused on the head.

17) Dr. Mohammad Amjadulla (PW 9) is examined to prove the P.M. report. He conducted the P.M. examination on the next day at about 9.00 a.m. He found following injuries, surface wounds on the dead body :-

- (i) Contused lacerated wound 2 x 1 x ½ cm in size vertically placed triangular in shape at the middle of head with haematoma of size 6 x 4 cm oval shape at right temporal region above the ear.
- (ii) Abrasion at right shoulder just above the lateral end of clavicle 2 x 1 cm. oval shape.
- (iii) Abrasion at left elbow at extensor surface just above wrist joint 1½ x 1 cm oval in shape.
- (iv) Abrasion at right forearm extensor surface just above wrist joint 1½ x 1 cm. oval in shape.

(v) Contusion 4 x 3 cm size at back on right scapula vertically placed oval shape.

(vi) Abrasion 1 x 1 cm size at right knee oval shape.

(vii) Abrasion 1 x 1 cm size at left knee oval shape.

(viii) Abrasion 2 x 1 cm of size at front right leg vertically placed.

(ix) Contusion 3 x 2 cm of size at front side of left thigh middle thigh.

Doctor has deposed that all the injuries were red in colour and they were antemortem in nature. Doctor has deposed that on internal examination, he noticed haemorrhage under scalp at right temporal region, left temporal region and he also noticed fracture of skull at left side from middle of head downwards to temporal region. There was petachial haemorrhage on both lobes of brain. He has deposed that the internal injuries mentioned in column No. 19 of P.M. report corresponds to injury No. 1.

18) Though Dr. Amjadulla (PW 9) has tried to say that injury Nos. 1, 5 and 9 are sufficient to cause death in ordinary course of nature, injury No. 5 found on scapula and injury No. 9 found on thigh portion cannot be called as that grievous and it is not possible to believe that these two injuries could have resulted in to death. However, doctor has then specifically mentioned that injury No. 1

proved to be fatal. Doctor has given evidence that injury Nos. 1, 5 and 9 can be caused due to hard and blunt object. In the cross examination, doctor has deposed that injury Nos. 2, 3, 4, 6, 7 and 8 which are abrasions and which were found on legs and arms can be caused even by rough surface. The rolling pan was shown to him and he has given evidence that injuries mentioned by him in column No. 17 of P.M. report can be caused by such rolling pan. The P.M. report prepared by him which is at Exh. 61, is consistent with the evidence given by doctor on the injuries.

19) The defence has not disputed that the injuries found on the head caused death. Dr. Amjadulla (9) was cross examined by the defence and it is suggested to him that injury No. 1 can be caused due to fall on stone. Doctor has given conditional admission and he has deposed that though such injury can be caused by fall on stone, but in the present matter injury was serious. Though directly doctor has not deposed that force is required to be used, it needs to be inferred that force is required to be used for inflicting injury No. 1. This Court holds that injury No. 1 was caused by assault and it was not caused due to fall on stone and no such probability is created by the defence. Thus, the death took place due to assault made on deceased and particularly, the injury was caused on the head of the deceased. Thus, it is a case of homicide. This evidence is consistent

with the oral evidence of Sharayu (PW 8). Even if there is probability that Vimalbai (PW 4) must have rushed to the spot after starting of the incident and she may not have witnessed the entire incident, her evidence can be used for corroboration as when she entered the house of accused, accused was still there and he was holding the pan. Though Vimalbai (PW 4) was not referred for medical examination, this Court holds that, that circumstance cannot affect the credibility of Vimalbai.

20) The prosecution has examined Vithal Angule (PW 10), P.I., who was working as API at the relevant time in Bhokar Police Station. He had recorded the report given by Maneji immediately after the incident. As Maneji is made accused for the other offence, this police officer is examined to prove the report given by Maneji. The report is at Exh. 68. Though the report cannot be used as substantive piece of evidence, it can be used as a circumstance as on the basis of this report, the crime for the offence punishable under section 302 of IPC was registered by police. Thus, everybody believed that it was a murder and it was not accidental death. This Court holds that the report can be considered under section 7 of the Evidence Act.

21) The prosecution has examined panch witness and

Investigating Officer to prove the statement given by accused, appellant under section 27 of the Evidence Act, on the basis of which the aforesaid weapon, kitchen article was recovered and seized. The rolling pan was taken over from the house where all the accused were living. The C.A. report is not exhibited, but the C.A. report is with the police papers and it shows that no blood was detected on the rolling pan. In any case, when there is direct evidence, non recovery of weapon cannot go to the root of the matter. There was virtually no reason for giving false evidence that rolling pan was used by the appellant. The article is made of wood. It has a round shape and only at the edges of the two circles of pan, it is little bit sharp, but not as sharp as knife. Ordinarily, the diameter of such rolling pan is around 1 ft. and that is not that heavy article. The description of the rolling pan is given in seizure panchanama at Exh. 34. But, unfortunately the diameter of the circle is not mentioned. In any case, such articles are available in the house of almost every family.

22) The aforesaid evidence is sufficient to prove that it is the accused, who inflicted the fatal injury, injury on the head of the deceased. Most of the other injuries as mentioned by the doctor in the evidence were abrasions. Considering the description of the spot given in the spot panchanama, it can be said that the deceased must

have either resisted or tried to save herself and in that attempt, she sustained the abrasions. Only three injuries could have been caused by the pan. Only one blow hit the head and that injury proved to be fatal. In view of these circumstances, the question arises as to what offence is committed by the appellant.

23) Considering the nature of kitchen article, pan, it can be said that unless it hits the body from the edges of the circles, the injury which was found on the head, could not have been caused. The evidence on record does not show that the accused took care to see that the said portion hits the head. If the flat portion had hit the head, possibly the deceased would not have died. In view of nature of evidence, it is not possible to infer that the accused intentionally used that portion of article. However, when he gave atleast three blows and one blow hit on the head, knowledge can be attributed that he was likely to cause death of Yamunabai. Further, the other evidence that the incident took place all of a sudden and due to quarrel between mother of appellant and the deceased is a circumstance which needs to be kept in mind.

24) In the cases following cases the Apex Court has laid down few of the circumstances which need to be considered for ascertaining the intention or knowledge.

**(i) 1980 (Supp) SCC 408 (MD Isak Md v. State of Maharashtra);**

**(ii) (2011) 15 SCC 189 (Swapn Kumar Senapati v. State of W.B.);**

**(iii) 1994 Supp (1) SCC 304 (B.N. Kavatakar v. State of Karnataka);**

**(iv) (2004) 9 SCC 14 (State of A.P. v. Naragudem Papireddy); and**

**(v) 2017 SCC OnLine SC 921 (Madhavan v. The State of Tamil Nadu).**

The circumstances quoted are as under :-

- (i) intention.
- (ii) nature of injuries, both external and internal.
- (iii) nature of weapon used.
- (iv) part of the body where injury was inflicted.
- (v) conduct of the accused.
- (vi) surrounding circumstances in which or the conduct due to which incident took place.

25) The learned counsel for the appellant placed reliance on following two reported cases :-

**(i) 1988 ALL MR (Cri) 43 [The State of Maharashtra Vs. Jahur Kamruddin Khatik],**

**(ii) 2002 ALL MR (Cri) 2342 [Arun Kisan Madavi Vs. State of Maharashtra].**

The learned APP placed reliance on following three cases of the Apex Court.

**(i) AIR 1977 (SC) 45 [State of Andhra Pradesh Vs. Rayavarapu Punnayya and Anr.]**

**(ii) AIR 1958 (SC) 465 [Vira Singh Vs. The State of Punjab].**

**(iii) Criminal Appeal No. 46/2016 [Nankaunoo Vs. State of UP] decided on 19.1.2016**

The facts and circumstances of each and every case are always different. In the present matter, due to peculiar circumstances of this case, this Court holds that there was no intention of murder, but the accused had knowledge that by such act, he was likely to cause death. Thus appellant needs to be convicted for the offence punishable under section 304 Part II of IPC. In the result, following order.

### **ORDER**

(I) The appeal is partly allowed. The conviction given to the appellant Govind Maneji Vaidya for the offence punishable under section 302 of IPC is set aside. The accused stands convicted for the offence punishable under section 304 Part II of IPC and he is sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.1,000/- (Rupees one thousand). In default of payment of fine, the accused is to further undergo simple

imprisonment for one month.

(II) The accused is entitled to set off in respect of the period for which he was behind bars as under trial prisoner as provided in section 428 of Criminal Procedure Code.

(III) The accused is to surrender to bail bonds for undergoing the sentence.

**[ARUN M. DHAVALÉ, J.]**

**[T.V. NALAWADE, J.]**

SSC/